



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2013-0026]

Enhanced Mobility for Seniors and Individuals with Disabilities: Proposed Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Proposed Circular and Request for Comments.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site, proposed guidance in the form of a circular to assist grantees in implementing the Enhanced Mobility for Seniors and Individuals with Disabilities Program. The Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141) blended the New Freedom Program (49 U.S.C. 5317) and the Elderly Individuals and Individuals with Disabilities Program (49 U.S.C. 5310) into a new Enhanced Mobility for Seniors and Individuals with Disabilities Program, authorized at 49 U.S.C. 5310. FTA is updating the circular due to these changes in the law. By this notice, FTA invites public comment on the proposed circular for this program.

DATES: Comments must be submitted by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. FTA will consider late-filed comments to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by docket number FTA-2013-0026. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>.

- 1) Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- 2) Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- 3) Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- 4) Fax: 202-493-2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA-2013-0026) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. Note that all comments received will be posted without change to www.regulations.gov including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the Federal Register on April 11, 2000 (65 FR 19477).

Docket: For access to the docket to read background documents and comments received, go to www.regulations.gov at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave SE, Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Gilbert Williams, Office of Program Management, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E44-409, Washington, D.C., 20590, phone: (202) 366-0797, fax:

(202) 366-7951, or e-mail, Gilbert.Williams@dot.gov. For legal questions, Bonnie Graves, Office of Chief Counsel, same address, Room E56-306, phone: (202) 366-4011, fax: (202) 366-3809, or e-mail, Bonnie.Graves@dot.gov.

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- I. Overview**

FTA is updating Circular 9070.1F, “Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions,” last revised in 2007, in order to incorporate changes in the law subsequent to passage of the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141). MAP-21 blended the previous “Section 5310 Program” and the New Freedom Program (49 U.S.C. 5317,

authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), and repealed by MAP-21).

The new Section 5310 Program, as amended by MAP-21, authorizes grants for the activities previously authorized under two separate grants programs, including public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and people with disabilities when public transportation is insufficient, unavailable or inappropriate; public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA) of 1990; and alternatives to public transportation that assist people with disabilities with transportation. Notably, the “alternatives to public transportation” language now applies to seniors as well as to people with disabilities, and projects no longer have to be “new” to be eligible for funding. In addition to the previously eligible activities, MAP-21 adds a new eligible activity under this section entitled: “public transportation projects that improve access to fixed route service and decrease reliance by people with disabilities on complementary paratransit.” The objective of this activity is to remove barriers, including improving access to public rights-of-way and installing elevators in rail stations that are not required by the ADA to have elevators, so people who use wheelchairs or have other mobility impairments have greater access to bus stops and rail stations.

Several aspects of the new Section 5310 Program carry forward language from the previous Sections 5310 and 5317 (New Freedom) Programs. For example, projects funded under the new Section 5310 must also be part of a program of projects that is annually submitted to FTA. Recipients of Section 5310 funds may coordinate and assist with meal delivery services for homebound people, if the service does not interfere with

the provision of transportation services. The Federal share of costs remains at 80 percent for capital projects and 50 percent for operating. Consistent with previous law, facilities or equipment may be transferred to other recipients under certain conditions. Further, the requirement for coordinated planning is retained, and projects must be included in the coordinated plan. In addition, seniors and people with disabilities must be included in the development and approval of the coordinated plan.

Under MAP-21, funding for the new Section 5310 Program is no longer apportioned only to States; however, it is now apportioned in the same way that Section 5317 (New Freedom) funds were apportioned under the previous authorization, except the senior population (age 65 and over) is now included in the new formula. Sixty percent of the funds are apportioned to designated recipients in large urbanized areas with a population of 200,000 or more in a ratio reflecting the number of seniors and people with disabilities in each such urbanized area; 20 percent of the funds are apportioned to the States in a ratio reflecting the number of seniors and people with disabilities in urbanized areas with a population of less than 200,000; and, likewise, 20 percent of the funds are apportioned to the States in a ratio reflecting the number of seniors and people with disabilities in rural areas with a population of less than 50,000 in each State.

The competitive selection process, required under the previous New Freedom Program, is no longer mandatory. However, whether or not a State or a designated recipient uses a competitive selection process to award funds to subrecipients, the State or designated recipient must certify that funds allocated to subrecipients are allocated on a fair and equitable basis.

Finally, the new Section 5310 Program requires FTA to establish performance measures for grants made under Section 5310. This notice, in the section describing changes in Chapter II, seeks comment on proposed performance measures for this program.

This notice also provides a summary of proposed changes to FTA Circular 9070.1F. Once the final circular is adopted, it will supersede the existing 5310 Program Circular. The proposed circular itself is not included in this notice; instead, an electronic version may be found on FTA's Web site, at www.fta.dot.gov, and in the docket, at www.regulations.gov. Paper copies of the proposed circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366-4865. FTA seeks comment on the proposed circular.

II. Chapter-by-Chapter Analysis

A. Chapter I – Introduction and Background

Chapter I of the proposed circular is an introductory chapter and covers general information about FTA and how to contact us, briefly reviews the authorizing legislation for FTA programs generally, includes definitions applicable to the Section 5310 Program, and provides a brief history of the Section 5310 Program. Where applicable, we have used the same definitions found in statute, rulemakings, and other circulars to ensure consistency.

There are few substantive changes to this chapter. We have removed the reference to Grants.gov, since Section 5310 grants are distributed by formula, and only discretionary grants are listed on Grants.gov. We have added, amended, or removed definitions as necessary. For example, MAP-21 amended the definition of “disability” in

title 49 U.S.C. 5302 to be consistent with the definition as it appears in the Americans with Disabilities Act (ADA). We have added a number of definitions that are used throughout FTA Circulars, such as “Capital Lease,” “Cost of Project Property,” “Master Agreement,” and “Operating Expenses.” Some terms have changed in accordance with MAP-21: “Chief Executive Officer of a State” is now “Governor;” “Elderly Individual” is now “Senior;” and “Other than Urbanized Area” is now “Rural Area.” We have also added a definition of “Traditional Section 5310 Projects” – meaning those capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable, and carried out by eligible subrecipients as described in Chapter III. The new Section 5310 Program requires that not less than 55 percent of funds apportioned to a State or designated recipient shall be available for these Traditional Section 5310 Projects.

Finally, we have updated the Program History section to include the changes to the program effective with MAP-21.

FTA seeks comment on the content of Chapter I.

B. Chapter II – Program Overview

We propose amending some of the content of this chapter. We propose amending Section 1, Statutory Authority, to remove references to SAFETEA-LU and instead include MAP-21. This section includes a number of statutory provisions, including the list of eligible activities, the requirement that 55 percent of funds be available for Traditional Section 5310 Projects, the types of entities that are eligible subrecipients for Traditional Section 5310 Projects, as well as the types of entities that may be subrecipients for other eligible activities. We propose amending Section 2, Program Goal,

to reflect the additional goal of removing barriers to transportation services and expanding the transportation mobility options available.

As stated previously, the Section 5310 Program is no longer administered exclusively by the States. Instead, funds are apportioned to States and designated recipients in large urbanized areas. FTA proposes changes to Chapter II to address these changes in the law. The recipient's role in program administration has been streamlined, and includes references to both States and designated recipients. We propose extensive edits to section 6, Relationship to Other FTA Programs, as both the Job Access and Reverse Commute (JARC) and New Freedom Programs were repealed, and the coordination provisions needed to be updated due to these repeals. We propose only minor edits to section 7, Coordination with Other Federal Programs. We propose updating the information related to the Coordinating Council on Access and Mobility (CCAM), and adding a paragraph on other interagency coordination.

Performance Measures

Section 3 of this chapter includes information on performance measures. Section 5310(h) requires FTA to submit a report to Congress no later than September 30, 2013, making recommendations on the establishment of performance measures for grants under Section 5310. Such report shall be developed in consultation with national nonprofit organizations that provide technical assistance and advocacy on issues related to transportation services for seniors and individuals with disabilities.

The performance measures to be considered in the report require the collection of quantitative and qualitative information, as available, concerning—

- (1) modifications to the geographic coverage of transportation service, the quality of transportation service or service times that increase the availability of transportation services for seniors and individuals with disabilities;
- (2) ridership;
- (3) accessibility improvements; and
- (4) other measures, as the Secretary determines is appropriate.

Additionally, Section 5335(c) requires all FTA grant recipients, including grant recipients under Section 5310, to report an asset inventory or condition assessment conducted by the recipient to the National Transit Database (NTD). Taken together, these requirements are similar to the requirements pertaining to FTA's Section 5311 Rural Area Formula Program. Section 5335(b) requires all recipients of grants under Section 5311 to report financial, operating, and asset condition information to the NTD. Additionally, Section 5311(b)(4) requires each recipient of grants under Section 5311 to annual report total annual revenue, sources of revenue, total annual operating costs, total annual capital costs, fleet size and type, related facilities, vehicle revenue miles, and ridership. Further, many recipients or subrecipients of Section 5310 grants may also be recipients of the Section 5307 Urbanized Area Formula Program, and as such are already required to submit comprehensive reports to the NTD.

One option FTA is considering is to simplify the reporting burden by combining all of the above reporting requirements into a single requirement for recipients of Section 5310 or Section 5311 to report to the NTD on behalf of all of their subrecipients, and for recipients of Section 5310 or Section 5307 to report on behalf of all of their subrecipients,

under a single, unified reporting system. The current NTD reporting requirements for Section 5311 already include ridership, accessibility improvements (as part of the revenue vehicle inventory, and other measures as the Secretary deems appropriate (vehicle revenue miles, total operating and capital expenses.)) In order to implement this option, FTA would have to expand the current Rural and Urbanized Area Annual data collections to include a measure of “geographic coverage of transportation service” and “service times that increase the availability of transportation services for seniors and individuals with disabilities.” As such, any Section 5310 recipient that is already reporting to the NTD as either a Section 5307 recipient or as a Section 5311 subrecipient would already meet the proposed Section 5310 reporting requirements through their existing NTD reports. Section 5310 grant recipients would then only need to add NTD reports for any subrecipients that are not already reporting to the NTD.

FTA seeks comment on the above approach:

- a. Should FTA consider implementing a unified and combined NTD Reporting Requirement for the Section 5310 and 5311 programs, and the Section 5310 and 5307 programs? This would require States to report on behalf of all subrecipients from both the 5310 and 5311 programs, except those already reporting to the NTD; Urbanized Area designated recipients would also have to report on behalf of all subrecipients, except those already reporting to the NTD.

- (1) If not, what approach should FTA consider for implementing the requirements of Section 5335(c) for all FTA grant recipients to report an asset inventory or condition assessment to the NTD?

- (2) If not, what approach(es) should FTA consider in making recommendations to Congress on collecting quantitative and qualitative data to support performance measures for the Section 5310 program?
- b. What information should FTA consider collecting in order to establish performance measures for “geographic coverage of transportation service?”
- (1) Would collecting the size and location of the demand response service area (either as operated, or else as required by the Americans with Disabilities Act to complement fixed-route service) be suitable?
- (2) If so, would collecting these data on the basis of political jurisdictions (e.g. counties served (for full-counties) or townships served (when serving less than a county) be suitable?
- (3) Would another information collection be more appropriate for meeting this requirement? Please be as specific as possible.
- c. What information should FTA consider collecting in order to establish performance measures for “service quality or service times that increase the availability of transportation services for seniors and individuals with disabilities?”
- (1) Would collecting the hours of operation for the demand response service (either as operated, or else as required by the Americans with Disabilities Act to complement fixed-route service) for each day of the week be suitable?

(2) Would collecting the service terms and conditions (e.g. advance notice requirement, eligibility (e.g. general public, limited on the basis of disability, etc.), pick-up window, etc.) be suitable?

(3) Would another information collection be more appropriate for meeting this requirement? Please be as specific as possible.

d. Once the data collection is established, how should FTA establish the performance measures?

FTA seeks comment on the content of Chapter II.

C. Chapter III – General Program Information

Due to the changes in Section 5310 under MAP-21, FTA proposes substantially revising this chapter. Since funding for the program is apportioned to States and designated recipients in large urbanized areas, FTA proposes inserting a number of sections from the circular that implemented the New Freedom Program (C. 9045.1, May 2007). This includes information regarding recipient designation, role of the designated recipient, and eligible direct recipients. In urbanized areas over 200,000 in population, the recipient charged with administering the Section 5310 Program must be officially designated through a process consistent with 49 U.S.C. 5302(4). Consistent with the former New Freedom program, FTA proposes that it is appropriate for the designated recipient for the Section 5307 Program to be the designated recipient for the Section 5310 Program, but another entity may be designated as the recipient for Section 5310 funds based on local circumstances. A State agency may be the designated recipient for large urbanized areas, but funds apportioned to the large UZA(s) must be allocated to those areas. The only other entity that may be a direct recipient for Section 5310 funds (for

example, at the conclusion of the project selection process) in a large UZA is a Section 5307 designated recipient.

Consistent with the Section 5310 program under previous authorizations, for Traditional Section 5310 Projects, the designated recipient or State applies for Section 5310 funds on behalf of private non-profit agencies and eligible local governmental authorities within the rural area of the State or the urbanized area. This provision ensures continued support for non-profit providers of public transportation, and maintains the status quo for these projects. For the remaining 45 percent of Section 5310 funds available to a rural or urbanized area, the designated recipient applies to FTA on behalf of itself and eligible subrecipients.

FTA proposes two sections on subrecipients: one section for Traditional Section 5310 Projects, and one for additional eligible projects. The new Section 5310 Program essentially maintains the status quo for Traditional Section 5310 Projects – those public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable or inappropriate. These projects are carried out by private non-profit organizations; or a State or local governmental authority that is approved by a State to coordinate services for seniors and individuals with disabilities, or certifies that there are no non-profit organizations readily available in the area to provide the service. Eligible subrecipients for other eligible Section 5310 activities include a State or local governmental authority, a private non-profit organization, or an operator of public transportation that receives a Section 5310 grant indirectly through a recipient.

In an effort to address one of the frequently asked questions of the New Freedom Program, FTA proposes including a new section that discusses private taxi operators as subrecipients. Taxi operators that provide shared-ride service may be subrecipients for non-Traditional Section 5310 Projects, as an operator of public transportation. Local (municipal/State) statutes or regulations, or company policy, will generally determine whether a taxi company provides shared-ride or exclusive-ride service. Taxi companies that wish to participate in the Section 5310 Program that do not provide shared-ride service may do so as contractors to recipients or subrecipients.

Sections 8, 9, and 10 of Chapter III discuss apportionment of funds, funds availability, and transfer of funds. FTA apportions funds by statutory formula: 60 percent among designated recipients in large urbanized areas; 20 percent to the States for small urbanized areas; and 20 percent to the States for rural areas under 50,000 in population. The formula is based on the ratio that the number of seniors and individuals with disabilities in an area (such as a large UZA) bears to the number of seniors and individuals with disabilities in all such areas. Consistent with the previous guidance, Section 5310 funds are available for obligation in the year of apportionment plus two additional years.

Under the previous Section 5310 Program, States could transfer funds to an apportionment under Section 5311(c) or 5307. This transfer provision is no longer part of the law. However, funds apportioned to small urbanized areas or rural areas may be transferred to projects in large urbanized areas if the Governor certifies that objectives of the Section 5310 program are being met in the small urbanized or rural areas that received the initial apportionment. Alternatively, a State may transfer funds apportioned

to small urbanized areas or rural areas for a project anywhere in the State, in accordance with an established statewide program for meeting the objectives of the Section 5310 program. A recipient may transfer apportioned funds only after consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers in the area from which the funds to be transferred were originally apportioned. Funds apportioned to large urbanized areas may not be transferred to other areas.

As stated previously, the new Section 5310 Program requires that not less than 55 percent of funds apportioned to a State or designated recipient shall be available for Traditional Section 5310 Projects – those public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable or inappropriate, and carried out by eligible subrecipients. Notably, this 55 percent is a floor, not a ceiling – recipients may use more than 55 percent of their apportionment for this type of project.

In addition to the above required capital projects, up to 45 percent of the apportionments may be utilized for additional public transportation projects: projects that exceed the ADA minimum requirements; projects that improve access to fixed route service and decrease reliance by individuals with disabilities on ADA complementary paratransit service; and projects that provide alternatives to public transportation that assist seniors and individuals with disabilities with transportation. Such projects must be targeted toward meeting the transportation needs of individuals with disabilities, although they may also be used by the general public.

In order to be clear about which projects are Traditional Section 5310 Projects and meet the 55 percent minimum threshold, FTA proposes dividing the eligible activities into two sections: eligible capital expenses that meet the 55 percent requirement; and other eligible capital and operating expenses. The list of proposed eligible activities for the Traditional Section 5310 Projects is virtually identical to the list of eligible activities in FTA Circular 9070.1F (Section 5310), with some streamlining. In addition, based on historical uses of the funds, FTA is proposing to include the eligibility of rolling stock for and acquisition of ADA complementary paratransit services as Traditional Section 5310 Projects when carried out by eligible subrecipients that can count toward the minimum 55 percent required, so long as the projects are planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable or inappropriate, and the projects are included in the area's coordinated plan. The list of proposed eligible activities in the other eligible capital and operating expenses is virtually identical to the list of eligible activities in FTA Circular 9045.1 (New Freedom). The list of eligible activities is illustrative and not exhaustive.

Under SAFETEA-LU, a higher Federal share for Section 5310 eligible capital projects was available to 14 States with a high proportion of Federal lands, as described in 23 U.S.C. 120(b) (also known as the "sliding scale"). MAP-21 struck this provision. Therefore, the Federal share for all States for Section 5310 funds is 80 percent for capital projects and 50 percent for operating projects. The proposed circular reflects this change in the law. However, when funds are transferred to Section 5310 from FHWA programs,

the higher Federal share by the sliding scale is permissible, but they are limited in use to eligible capital projects.

FTA seeks comment on the content and format of Chapter III.

D. Chapter IV – Program Development

FTA proposes only minor changes to Chapter IV, generally to address the change from a State-managed program to a program managed by designated recipients as well as States. However, FTA did make changes to the categories of approval and the revisions to the program of projects sections. First, FTA proposes to eliminate Category C, which was typically used for program reserve. Given that Section 5310 funds are available for obligation for a total of three years, if the State or designated recipient does not have a project identified that fits in either Category A or B, FTA recommends the funds remain unobligated until future needs arise. Second, FTA proposed an update to the revisions to the program of projects sections to provide flexibility to States or designated recipients to make minor revisions without having to necessarily obtain FTA's prior approval.

FTA seeks comment on the content of Chapter IV.

E. Chapter V – Coordinated Planning

This chapter describes the required coordinated planning process. FTA proposes only minor changes to this chapter, including the change to the definition of a coordinated plan, which now requires that selected projects be included in, and not merely derived from, the coordinated plan, and that seniors and individuals with disabilities be involved in the development and approval of the coordinated plan. Even with the change in language to "included in", FTA proposes to maintain flexibility in how projects appear in the coordinated plan. For example, for purposes of the coordinated plan, a project is a

strategy, activity or specific action addressing an identified service gap or transportation coordination objective articulated and prioritized within the plan. FTA seeks comment on maintaining this approach to coordinated planning and the content of Chapter V.

F. Chapter VI – Program Management and Administrative Requirements

FTA proposes only minor changes to Chapter VI, generally to address the change from a State-managed program to a program managed by designated recipients as well as States. This section is also updated to reflect MAP-21 updates. FTA expects to further amend section 23, Reporting Requirements, subsection d., Program Measures, in response to comments sought on performance measures. Please see the section on Performance Measures, above. FTA seeks comment on the content of Chapter VI.

G. Chapter VII – State and Program Management Plans

FTA proposes only minor changes to Chapter VII, generally to address the change from a State-managed program to a program managed by designated recipients as well as States. This includes the requirement that designated recipients that are not States must have a Program Management Plan for the Section 5310 Program. This is the same requirement designated recipients had for the New Freedom Program, so FTA proposes continuing the requirement. In the case of designated recipients that are not States, FTA will review the Program Management Plan during triennial reviews.

FTA seeks comment on the content of this chapter.

H. Chapter VIII – Other Provisions

This chapter describes cross-cutting FTA and Federal requirements that apply to the Section 5310 Program. FTA includes minor language changes to this chapter that

reflect the change in Section 5310 from a State-managed program to a program managed by designated recipients as well as States, and to update for MAP-21 changes. FTA proposes removing the section on public hearing requirements, as the authority for that section was formerly in 49 U.S.C. 5323(b) as amended by SAFETEA-LU, and repealed by MAP-21. We propose removing the section on pre-award and post-delivery reviews, since this information is already covered in the procurement section of Chapter VI. We propose streamlining the section on drug and alcohol testing section. We have updated the section on civil rights to reflect updated guidance implemented since the last publication of this circular. We have similarly updated the safety and security section to reflect changes in the law.

FTA seeks comment on the content of this chapter.

I. Appendices

FTA made only a few changes to the appendices, generally to reflect changes in the law. For example, at least 55 percent of the annual apportionment must be identified for Traditional 5310 Projects, and the applicant must clearly identify the capital projects satisfying the 55 percent minimum requirement. The extended budget descriptions should confirm which activities are supporting this requirement. For public transportation projects that exceed the requirements of the ADA, projects that reduce barriers to people with disabilities, or for alternatives to public transportation that assist seniors and individuals with disabilities, the applicant should use scope 647-00.

Appendix B provides a Sample Section 5310 Program of Projects, and demonstrates how the applicant will have a line item for traditional Section 5310 capital

projects at the 55 percent minimum level and a line item for operating expenses and other capital expenses at the 45 percent maximum level.

FTA seeks comment on the appendices.

Issued in Washington, DC, this 3rd day of July, 2013.

Peter Rogoff
Administrator

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